

SENATE, No. 2245

[Senate, January 13, 2010 - Substituted by amendment by the Senate (Ways and Means) for Senate, No. 2206.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

AN ACT RELATIVE TO COMPREHENSIVE SITING REFORM FOR LAND BASED WIND PROJECTS.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to establish clear standards and timely and predictable permitting procedures to encourage wind energy development in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- 1 **SECTION 1.** This act shall be construed in a manner to achieve its public purposes, which are
- 2 to encourage the development of clean, renewable, electric generating plants and ancillary facilities
- 3 powered by wind, ensure that such facilities are sited in appropriate locations based on clear, predictable

4 and protective environmental, cultural and historic resource standards and streamline the permitting of
5 such facilities at the state and local level and reduce delays associated with appeals of such permits.

6 **SECTION 2.** Section 10 of chapter 25A of the General Laws, as amended by section 22 of
7 chapter 169 of the Acts of 2008, is hereby amended by adding the following subsection:-

8 (g) The department shall have a full-time employee who shall work within the division and
9 collaborate with regional planning authorities to provide technical assistance to municipalities with
10 respect to the siting of wind energy facilities.

11 **SECTION 3.** Section 3 of chapter 40A, as appearing in the 2008 Official Edition, is hereby
12 amended by inserting after the words “public service corporation” in lines 46 and 53-54 the following
13 words:- or by any person or entity to generate and transmit electricity derived from wind.

14 **SECTION 4.** Said section 3 of said chapter 40A, as so appearing, is hereby amended by
15 inserting after the words “the corporation” in line 56 following:- or of any person or entity to generate
16 and transmit electricity derived from wind.

17 **SECTION 5.** The General Laws are hereby amended by inserting after Chapter 40S the
18 following chapter:-

19 Chapter 40T: Wind Energy Permitting

20 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
21 otherwise have the following meanings:-

22 “Facility”, a wind energy facility.

23 “Local boards”, boards, commissions, officials or other municipal agencies or authorities who would
24 otherwise have jurisdiction over any portion or all of the siting of a proposed facility.

25 “Interested Party”, an abutter; abutting municipality; a lawfully established trust, corporation,
26 partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock
27 company, receivership, business or real estate trust or any other legal entity organized for profit or
28 charitable purposes who is substantially and specifically affected by a proposed facility; or any group
29 consisting of not fewer than 10 residents of the municipality in which the facility is proposed.

“Regional planning agency”, an agency with regulatory authority to issue permits, licenses or other governmental approvals for particular land uses within its jurisdiction.

“Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and any ancillary facilities such as roadways, transmission or distribution lines, substations and any other buildings, structures or equipment whose primary purpose is to support the generation and delivery of electricity of at least 2 megawatts powered by wind; provided, however, that wind energy facility shall not include structures or buildings whose primary purpose is unrelated to the generation and delivery of electricity powered by wind.

“Wind energy permitting board”, municipal board appointed under section 3 or if no board has been appointed, the planning board in the city or town of the proposed facility.

Section 2. A municipality with significant wind resource areas as determined by the department of energy resources, in consultation with the Massachusetts Municipal Association and applicable regional planning authorities, shall establish a wind energy permitting board to conduct local permitting of a wind energy facility, within 30 days of receipt of a letter of intent from an applicant seeking to file an application under this chapter. In all other municipalities, the municipality may establish a wind energy permitting board, or the municipality’s planning board shall implement the provisions of this chapter.

Section 3. In the case of towns, the board of selectmen, and in the case of cities, the mayor, shall establish and appoint the wind energy permitting board, to be composed of either 3 or 5 members, at the discretion of the board of selectmen or mayor. A 3 member board shall consist of 1 representative from the conservation commission, 1 member from the zoning board of appeals, and 1 member from the planning board. A 5 member board shall consist of 2 members of the conservation commission, 1 member from the zoning board of appeals and 2 members from the planning board. The board of selectmen or mayor shall appoint 1 member of the board to be the chairman. If the board of selectmen or mayor determines that it is infeasible to establish a wind energy permitting board, the planning board shall serve as the wind energy permitting board. In such instances, the planning board shall take actions

to maximize the opportunity for input from other municipal boards, and shall at a minimum ensure that the conservation commission and zoning board of appeals are provided with copies of the application and notices of all public hearings relating to the application.

Section 4. (a) A person who proposes to construct a wind energy facility with a capacity of at least 2 megawatts may elect to follow the procedure established by this chapter.

(b) A proposal to develop a wind energy facility that complies with the standards established under section 69V of chapter 164 shall be eligible for the fast-track permitting set forth in this section and section 69W of chapter 164.

(c) The project proponent shall file an application with the wind energy permitting board and the town or city clerk in lieu of separate applications to the local boards. The proponent shall also file the application with the town or city clerk of any abutting municipality. The application shall identify all provisions of local laws or regulations from which a waiver is sought. Within 30 days of receipt, the chairman of the wind energy permitting board, or the chairman's designee, shall determine whether the application is complete and inform the proponent of that decision. If the application is incomplete, the proponent shall be allowed 30 days or such longer time as may be mutually agreed upon to complete the application. After the expiration of this period, the proponent may elect to go forward with the information provided, and the procedures and timelines in this section shall apply.

(d) The wind energy permitting board shall immediately notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within 60 days of the board's determination that an application is complete or the expiration of the additional information period described in subsection (c), and in compliance with the notice and publication provisions of section 11 of chapter 40A, hold a public hearing and a written public comment period of not less than 45 days on the application. The wind energy permitting board shall request the recommendations of the local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue a permit or other approval as any local board or official who would otherwise act with respect to such application,

including, but not limited, to the power to attach conditions to said permit or approval as are consistent with this section and all other laws and regulations.

(e)The wind energy permitting board, in making its decision on the application, shall apply all applicable local by-laws and ordinances, and take into consideration the recommendations of the local boards and shall have the authority to assess fees to retain consultants under the provisions of section 53G of chapter 44. The board shall have the authority to waive zoning and non-zoning requirements of the municipality's local laws, regulations, policies or other regulatory requirements.

(f)The wind energy permitting board shall file with the city or town clerk a written decision, based upon a majority vote of the board, within 120 days from the filing of the application, unless the time period is extended by mutual agreement by the board and the applicant, and the agreement is filed with the city or town clerk prior to the expiration of the 120 day period. Failure to file a written decision or extension within the 120 day period shall result in a constructive approval of the application, unless a municipal board has made a timely referral of an application to a regional planning agency.

(g)A wind energy facility that does not comply with the standards established under section 69V of chapter 164 shall be governed by subsections (a) through (f) of this section, except that the deadline for a decision shall be 180 days. If the applicant states that the project complies with the standards, but the wind energy permitting board determines through a vote or interim written decision within the 120 day period that the application does not comply with the standards, the deadline for decision shall be extended so that the deadline is 180 days from the filing of the application unless a municipal board has made a timely referral of an application to a regional planning agency.

(h)The wind energy permitting board is authorized to assess a community mitigation fee upon the applicant, which shall not exceed a cap established by the department of energy resources through regulations. The cap shall be set so as to ensure that community mitigation fees do not render the project economically non-viable.

(i)The applicant must offer the host municipality or its designee the option of entering into a legally enforceable purchase and sale agreement for not more than 10 per cent of the electricity

108 generated on site for use by the host municipality or its designee; provided, however, that the wind
109 energy permitting board may accept other forms of mitigation in lieu thereof, including, but not limited
110 to, a purchase and sale agreement for electricity between the applicant and a municipality, a county, a
111 regional planning agency or other regional governmental entity, a municipal electric cooperative or a
112 municipal aggregator of energy. The host municipality is also authorized to enter into legally
113 enforceable agreements with the applicant for additional mitigation measures.

114 (j)Notwithstanding any general or special law to the contrary, a municipality in which the wind
115 energy permitting board has issued an approval under this chapter shall be deemed to have met the green
116 community eligibility requirements set forth in subsections (2) and (3) of section 10(c) of chapter 25A,
117 and if the municipality seeks a waiver of any of the other eligibility requirements under section 10(c) of
118 chapter 25A, shall be entitled to a finding that the municipality has committed to alternative measures
119 that advance the purposes of the green communities program as effectively as adherence to the
120 requirements.

121 (k) If a project proponent proposes a single wind energy facility in more than 1 municipality, the
122 wind energy permitting boards, or planning boards, if applicable, may hold joint hearings in 1 or more
123 municipalities.

124 (l) In areas where regional planning agencies have regulatory authority, a local wind energy
125 permitting board or planning board shall refer an application to the regional planning agency in
126 accordance with the special act establishing the regional planning agency. Notwithstanding any general
127 or special law to the contrary, prior to the regional planning agency's final determination on the
128 application, the local wind energy permitting board may review and hold public hearings and meetings
129 on the application; provided, however, that no final determination shall be made until the regional
130 planning agency has issued an approval or approval with conditions. Notwithstanding any general or
131 special law to the contrary, in areas where regional planning agencies have regulatory authority, a wind
132 energy permitting board and regional planning agency may hold joint hearings concerning a proposed
133 facility so that both boards may review a project simultaneously. A wind energy permitting board shall

134 file its written decision with the city or town clerk within 60 days of the date on which a regional
135 planning agency issues its final decision of approval or approval with conditions. Failure of the wind
136 energy permitting board to file a written decision or an agreed upon extension within the 60 day period
137 shall result in a constructive approval of the application by the wind energy permitting board. If a
138 regional planning agency denies a development of regional impact permit to a proposed wind energy
139 facility, the wind energy permitting board shall not issue any permits for such a facility and no
140 constructive approval shall result.

141 (m) (i) An interested party who is substantially and specifically aggrieved by a decision of the wind
142 energy permitting board or a regional planning agency granting a permit or permit with conditions to the
143 applicant, or constructively approving such a permit may appeal the decision to the energy facilities
144 siting board and this appeal shall be the exclusive means of review of such decisions of a wind energy
145 permitting board or a regional planning agency. The appeal shall be filed with the energy facilities siting
146 board no later than 30 days after the wind energy permitting board's decision is filed with the city or
147 town clerk or rendered by a regional planning agency, and shall be governed by section 69W of chapter
148 164.

149 (ii) An appeal of a decision of the wind energy permitting board denying a permit or granting a
150 permit with conditions, brought by the applicant or by any other proponent of a wind energy facility
151 shall be filed with superior court or the permit session of the land court under section 3A of chapter 185
152 within 30 days of the filing of the decision with the city or town clerk. The court shall hear all evidence
153 pertinent to the authority of the wind energy permitting board and determine the facts, and, upon the
154 facts so determined, annul such decision if found to exceed the authority of the wind energy permitting
155 board or make such other decree as justice and equity may require. An appeal brought by the applicant of
156 a decision of a regional planning agency denying a permit or granting a permit with conditions shall be
157 governed by the enabling statute of the applicable regional planning agency.

158 (n) This chapter shall not apply to lands that are under protection pursuant to Article XLIX, as
159 appearing in Article XCVII, of the Amendments to the Constitution of the Commonwealth (Article 97).

160 **SECTION 6.** Section 69H of chapter 164 of the General Laws, as appearing in the 2008 Official
161 Edition, is hereby amended by inserting after the words “the commissioner of the department of
162 environmental protection” the following words:- , the commissioner of the department of fish and game.

163 **SECTION 7.** Said section 69H of said chapter 164, as so appearing, is hereby further amended
164 in line 20 by striking out the figure “3” and inserting in place thereof the following figure:- 4.

165 **SECTION 8.** Said section 69H of said chapter 164, as so appearing, is hereby further amended
166 by inserting after the words “labor issues” the following words:- , 1 of whom shall be a municipal
167 official with experience in land use planning.

168 **SECTION 9.** Chapter 164 of the General Laws, as so appearing, is hereby amended by inserting
169 after section 69S the following 4 sections:-

170 Section 69T. As used in section sixty-nine U to sixty-nine X, inclusive, the following words and
171 terms shall, unless the context clearly requires otherwise have the following meanings:—

172 “Facility”, a wind energy facility.

173 “Interested Party”, an abutter; abutting municipality; lawfully established trust, corporation,
174 partnership, sole proprietorship, firm, franchise, association, organization, holding company,
175 joint stock company, receivership, business or real estate trust or any other legal entity organized
176 for profit or charitable purposes which is substantially and specifically affected by the proposed
177 facility; or any group consisting of not fewer than 10 residents of the municipality in which the
178 facility is proposed.

179 “Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and
180 any ancillary facilities such as roadways, transmission or distribution lines, substations, and any
181 other buildings, structures or equipment whose primary purpose is to support the generation and
182 delivery of electricity of at least 2 megawatts powered by wind; provided, however, that wind
183 energy facility shall not include structures or buildings whose primary purpose is unrelated to the
184 generation and delivery of electricity powered by wind.

185 “Wind energy permitting board”, municipal board appointed under sections 2 and 3 of chapter
186 40T or if no board has been appointed, the planning board.

187 Section 69U. The department of public utilities shall establish a division of wind energy facility
188 siting. The chairman of the department of public utilities shall appoint a director of that division who
189 shall be responsible for ensuring that the standards established in section 69V of this chapter are timely
190 issued, and that the procedures for the siting of wind energy facilities established in section 69W result
191 in timely and predictable permitting decisions that uphold the intent of sections 69U through 69X,
192 inclusive.

193 Section 69V. The energy facilities siting board shall, with the approval of the secretary of the
194 executive office of energy and environmental affairs, promulgate regulations pursuant to chapter 30A
195 containing standards for the siting, operation, and decommissioning of electric generating plants and
196 ancillary facilities thereto that are: (1) powered by wind energy and (b) have the capacity to generate at
197 least 2 megawatts of electricity. The standards shall be established for wind energy facilities that are
198 sited on land. Facilities are not required to comply with the standards established under section 69V by
199 the energy facilities siting board, but compliant facilities shall be eligible for state agency fast-track
200 permitting under section 69W of this chapter and municipal fast-track permitting under chapter 40T. The
201 siting of offshore wind facilities shall be governed by the integrated ocean management plan established
202 under section 4C of chapter 21A.

203 (b) The standards for wind energy facilities sited on land shall include, but not be limited to;

204 (1) lighting;

205 (2) appropriate setbacks from residences to prevent significant sound and health and
206 safety impacts;

207 (3) performance standards to avoid impacts, and to the extent impacts cannot be
208 avoided, to minimize and mitigate impacts to scenic or recreational areas of special federal or
209 state significance, regional cultural facilities, historic resources, priority or estimated habitats
210 for plant and animal species listed pursuant to chapter 131A, populations of bird and bat species

that are considered by the department of fish and game as being vulnerable to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland resources or other ecologically sensitive areas subject to protection under federal or state law or as identified by the department of environmental protection, department of conservation and recreation, or the department of fish and game; and

(4) such other factors as the board determines to be relevant to foster the development of wind energy in a manner that avoids, minimizes and mitigates material adverse environmental impact. Mitigation may include, but is not limited to, the preservation, enhancement, restoration or establishment of resources of greater or equal value to those being impacted, as compensation for unavoidable impacts.

The standards may vary from region to region to take into account material differences in the natural resources, available wind resources or other characteristics of regions; provided, however, that all applicable standards shall be at least as protective as existing state environmental statutes and regulations. The standards shall be based upon best available science, be drafted in consultation with the relevant agencies and the advisory group created by subsection (c), and shall be reviewed and updated as necessary, but not less frequently than once every 5 years.

(c) The energy facilities siting board shall empanel an advisory group to develop recommended standards under the direction of the chairman of the board. The advisory group may utilize the resources and staff of the board, or those of the board's members, who may participate as appropriate. The advisory group shall include the commissioner of the department of conservation and recreation, the chairman of the Massachusetts historical commission, the commissioner of the department of public safety, the commissioner of the department of public health, or the designees of any of the foregoing from their respective staffs. The advisory group shall also include the following individuals to be appointed by the governor: a representative of the wind energy industry; a representative of the electric transmission and distribution industry; 2 representatives from non-profit environmental organizations

237 with experience in wind energy facility siting policy, 1 of whom shall represent a land and water
238 conservation organization; 1 representative of the Berkshire Regional Planning Commission; 1
239 representative of the Berkshire Natural Resources Council; 1 representative of the Franklin Regional
240 Council of Governments; 1 representative from the Cape Cod Commission; 1 representative from the
241 Martha's Vineyard Commission; 1 representative from the Nantucket Planning and Economic
242 Development Council; 1 municipal official with experience in wind energy siting drawn from a list of
243 not fewer than 3 candidates prepared by the Massachusetts Municipal Association; provided, however,
244 that the same municipal official may not serve on the wind energy facilities siting board and advisory
245 group; and up to 2 other representatives, appointed by the chairman, as the chairman of the board deems
246 advisable. Prior to submitting the recommended standards to the board, the advisory group shall hold
247 not less than 2 regional public hearings for the purpose of soliciting public comments. Prior to adopting
248 the regulations, the board shall hold a public hearing and follow the additional procedures set forth in
249 section 2 of chapter 30A.

250 Section 69W.

251 (a) Notwithstanding any general or special law to the contrary, any person who proposes to
252 construct a wind energy facility with a capacity of at least 2 megawatts may elect to follow the
253 procedures established by this section and sections 69U and 69V of this chapter.

254 (b) A proposal to develop a wind energy facility that complies with the standards established
255 under section 69V shall be eligible for the fast-track permitting procedures set forth in this section and
256 section 3 of chapter 40T.

257 (c) After a municipal wind energy board or planning board authorized under section 1 or 2 of
258 chapter 40T files a written decision with the city or town clerk, or constructive approval results pursuant
259 to section 3(f) of chapter 40T, the project applicant may file an application with the energy facilities
260 siting board, together with such supporting materials as are necessary to demonstrate that the facility
261 complies with the standards. The application shall include, in such form and detail as the energy
262 facilities siting board shall from time to time prescribe, the following information: (i) a description of the

263 proposed wind energy generating facility, including any ancillary structures and related facilities; (ii) a
264 description of the project's environmental impacts, both positive and negative, (iii) a statement of
265 whether the project complies with the standards established under section 69V, and if it does not, a
266 listing of the standards for which the project does not comply and an explanation as to why compliance
267 is not practicable; (iv) a complete list of state agency permits that would otherwise be needed for the
268 facility; and (v) any other information requested by the board. The applicant shall simultaneously file a
269 notice of the application with the municipal wind energy permitting board or planning board established
270 under chapter 40T, any state or regional agencies that have permitting authority over the proposed
271 facility, abutters to the site of the facility, and the office of the Massachusetts Environmental Policy Act,
272 which shall publish the notice, as soon as possible, in the Environmental Monitor. Within 45 days of
273 receipt of the application, energy facilities siting board staff shall review the application, notify all
274 relevant permitting agencies, and inform the applicant in writing whether the application is complete.
275 The applicant shall make the full application readily available to all relevant agencies and municipalities,
276 and the energy facilities siting board shall establish a procedure to ensure that the application and
277 supporting materials are available for timely local and statewide public access, including but not limited
278 to, electronically.

279 (d) Within 2 months of the energy facilities siting board notifying the applicant that the
280 application is complete, a hearing officer of the energy facilities siting board shall take written public
281 comment and hold a non-adjudicatory public hearing to take oral comment on the application. The
282 hearing shall be held in the host community or if no appropriate locations are available in a host
283 community, in the nearest available appropriate location. The hearing officer shall allow at least 45 days
284 from the board's determination that the application is complete for public comments to be submitted.
285 Based on the comments that are submitted, if the hearing officer determines that there are genuine
286 disputes of material fact as to whether the facility meets the standards, the hearing officer shall schedule
287 at least 1 evidentiary hearing for the limited purpose of taking further evidence upon the issues for which
288 there is a genuine dispute of material fact. In any instance in which there is a factual dispute between the

289 applicant and a state agency regarding matters within the state agency's regulatory authority, an
290 evidentiary hearing shall be held as to that dispute at the request of the applicant or the state agency.
291 Evidence may be presented at such hearing by the applicant, the municipality in which the proposed
292 facility is located, state permit granting authorities, and by any interested party; provided, however, that
293 such party submitted comments during the initial public comment period described herein. The
294 evidentiary hearing shall be completed no later than 3 months following the close of the initial public
295 comment period. The evidentiary hearing shall include written or oral testimony under oath, the
296 opportunity for cross-examination and the compilation of a record of admissible evidence, but the
297 hearing officer and the energy facilities siting board shall not be bound by paragraph 7 of section 11 of
298 chapter 30A.

299 (e) State permit granting agencies shall file written comments with the hearing officer during the
300 initial 2 month public comment period to assist the energy facilities siting board in determining whether
301 the standards have been met, and may include recommended conditions within each agency's regulatory
302 purview.

303 (f) Within 2 months of the close of the public hearing or evidentiary hearings if scheduled, the
304 energy facilities siting board shall determine, in writing, whether the proposed facility meets the
305 standards. Notwithstanding the provisions of any other law to the contrary, if the energy facilities siting
306 board finds that the proposed facility meets the standards, it shall approve the facility, and may impose
307 conditions to its approval. Conditions recommended by state environmental agencies with respect to
308 issues within their permitting authority, by state environmental agencies with respect to biological
309 resources identified under section 69V but not within their permitting authority, or conditions
310 recommended by host municipalities or their constituent boards or regional planning agencies with
311 regulatory authority, shall be adopted to the maximum extent practicable, and the energy facilities siting
312 board shall explain the reasons for not including any such conditions in its written decision.

313 (g) (1) Should the energy facilities siting board find that the facility does not meet the siting
314 standards, it may hold additional hearings to take additional evidence from both the applicant and

315 interested parties, if necessary, and, notwithstanding the provisions of any other law to the contrary,
316 approve the facility and impose conditions to its approval if it finds that:

317 (A) the facility has complied to the maximum practicable extent with the siting
318 standards established under section 69V;

319 (B) that the facility has mitigated the impact arising out of the non-compliance with the
320 siting standards; and

321 (C) the benefits of the facility outweigh the detriments.

322 (2) To determine whether the benefits outweigh the detriment, the energy facilities siting board
323 shall take into account;

324 (A) benefits including, but not limited to:

325 (i) the avoidance or reduction of greenhouse gases and other pollutants;

326 (ii) energy reliability;

327 (iii) security and diversification;

328 (iv) public ownership of the facility or reduction of electric rates to the
329 community that will be affected by the facility; and

330 (B) detriments including, but not limited to the impact on;

331 (i) ecologically sensitive areas;

332 (ii) large unfragmented habitat blocks;

333 (iii) priority or estimated habitats for all plant and animal species listed under
334 chapter 131A;

335 (iv) populations of bird and bat species that are considered by the department of
336 fish and game to be vulnerable to impacts from the operation of wind turbines;

337 (v) historic, cultural or scenic or recreational areas of special federal or state
338 significance;

339 (vi) noise; and

340 (vii) public safety.

341 (3) Notwithstanding the provisions of any other law to the contrary, if the energy facility siting
342 board finds that the facility meets the standards in this subsection, it may approve the facility, and may
343 impose conditions to its approval.

344 (4) A decision under this subsection shall be issued no later than 9 months after the energy
345 facilities siting board determines in writing that the application is complete, if no evidentiary hearings
346 are held, or within 12 months after such determination if evidentiary hearings are held.

347 (5) Conditions recommended by state environmental agencies with respect to issues within their
348 permitting authority under state law, by state environmental agencies with respect to biological resources
349 identified under section 69V but not within their permitting authority under existing state law, or
350 conditions recommended by host municipalities or their constituent boards, shall be adopted to the
351 maximum extent practicable, and the energy facilities siting board shall explain the reasons for not
352 including any such conditions in its written decision.

353 (h) The construction, maintenance and operation of a facility which receives an approval under
354 this chapter shall conform with such approval and any terms and conditions contained therein.
355 Notwithstanding the provisions of any other law to the contrary, if the energy facilities siting board
356 issues an approval under this section, no state agency shall require any approval, consent, permit,
357 certificate or condition for the construction, operation or maintenance of the facility with respect to
358 which the approval is issued and no state agency shall impose or enforce any law, ordinance, by-law,
359 rule or regulation nor take any action nor fail to take any action which would delay or prevent the
360 construction, operation or maintenance of such facility; provided, however, that the energy facilities
361 siting board shall not issue an approval the effect of which would be to grant or modify a permit,
362 approval or authorization which, if so granted or modified by the appropriate state agency, would be
363 invalid because of a conflict with applicable federal water, air, historic or threatened and endangered
364 species standards or requirements. The approval, if issued, shall be in the form of a composite of all state
365 individual permits, approvals or authorizations which would otherwise be necessary for the construction
366 and operation of the facility and that portion of the approval which relates to subject matters within the

367 jurisdiction of a state agency shall be enforced by said agency under the other applicable laws of the
368 commonwealth as if it had been directly granted by the agency.

369 (i) The energy facilities siting board shall combine the review and approval process under this
370 section with any additional review of a local wind energy permitting board decision approving,
371 approving with conditions, or constructively approving an application if such an appeal is brought by a
372 person or entity other than the applicant under subsection l of section 3 of chapter 40T. If the energy
373 facilities siting board approves the facility under section (f) or (g), it shall affirm the decision of the wind
374 energy permitting board, but may modify conditions or impose additional conditions upon the approval
375 to address claims brought by the party seeking additional review of the wind energy permitting board
376 decision.

377 (j) An application filed by a person proposing to construct a wind energy facility that does not
378 comply with the standards shall also be governed by subsection (d) through(g), inclusive, except that:

379 (1) the hearing officer shall hold a public hearing and close the public comment period
380 within 4 months from the date that the energy facilities siting board determines that the
381 application is complete;

382 (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine
383 disputes of material facts within 8 months from the date the energy facilities siting board
384 determines that the application is complete; and

385 (3) the energy facilities siting board shall issue a decision within 4 months of the close
386 of the public comment period or evidentiary hearing.

387 The energy facilities siting board shall issue an approval if it finds that the facility meets the standards
388 set forth in subsection (g) of this section. Conditions recommended by state environmental agencies with
389 respect to issues within their permitting authority under state law, by state environmental agencies with
390 respect to biological resources identified under section 69V but not within their permitting authority
391 under existing state law, or conditions recommended by host municipalities or their constituent boards,
392 or regional planning agencies with regulatory authority, shall be adopted to the maximum extent

393 practicable, and the board shall explain the reasons for not including any such conditions in its written
394 decision.

395 (k) The regulations promulgated under section 69V shall include clear and concise application
396 requirements, including but not limited to pre-application survey requirements developed by the energy
397 facilities siting board in consultation with the department of fish and game and the department of
398 environmental protection, and may provide for pre-application consultation and site visits. No
399 application shall be considered complete until surveys, if required, are determined by the department of
400 fish and game or the department of environmental protection to be complete. Sufficient data shall be
401 required from the applicant by these regulations to enable the energy facilities siting board to determine
402 whether the facility meets the standards under section 69V, and if it does not, whether it meets the
403 standards set forth in subsection (g), provided, however, that these regulations shall not require any data
404 related to the necessity or cost of the proposed generating facility, except for data related to the costs or
405 economic feasibility associated with the mitigation, control or reduction of the environmental impacts of
406 the proposed generating facility, so that the energy facilities siting board can make an informed
407 determination as to the ability of the applicant to afford to comply with conditions imposed by an
408 agency, municipality or the state.

409 (l) The energy facilities siting board shall promulgate regulations governing the procedures for
410 permitting under this section and appeals brought under chapter 40T. The regulations shall also provide
411 for a reasonable fee for wind energy facility applications subject to this section to defray the energy
412 facilities siting board's reasonable costs of processing the application; a fee set under such regulations
413 may be adjusted according to project size or other objective criteria. The regulations shall also ensure
414 that a reasonable portion of the application fee charged shall be allocated to state agencies that would
415 otherwise be issuing permits for the facility in accordance with a fee schedule to be adopted concurrently
416 with the regulations. The energy facilities siting board may retain said fees for the purpose of reviewing
417 applications to construct wind energy facilities. Any remaining balances of said fees at the end of a fiscal
418 year shall not revert to the General Fund, but instead shall be available to the energy facilities siting

419 board during the following fiscal year for the purposes set forth in sections 69U through 69X, inclusive.
420 Nothing in this section shall change the level or use of siting fees for any other type of facility subject to
421 section 69J ½ of this chapter.

422 (m) Any interested party aggrieved by a decision of the energy facilities siting board under this
423 section shall have a right to judicial review in the manner provided by section 5 of chapter 25. The scope
424 of such judicial review shall be limited to whether the decision of the energy facilities siting board
425 conforms with the constitutions of the commonwealth and the United States, was made in accordance
426 with the procedures and application of standards established under sections 69V and 69W, and with the
427 rules and regulations of the board with respect to such provisions, was supported by substantial evidence
428 in the record of the board's proceedings and was arbitrary, capricious or an abuse of the board's
429 discretion.

430 (n) Section 69W shall not be deemed to exempt wind energy facilities from sections 61, and 62A
431 through 62I of chapter 30.

432 Section 69X: Sections 69V and 69W shall not preclude, or obligate an applicant for a facility
433 from seeking and obtaining board approvals and certificates under sections 69K through 69O ½ in lieu of
434 proceeding under sections 69V and 69W.

435 Section 69Y: Sections 69U through 69X shall not apply to lands that are under protection
436 pursuant to Article XLIX, as appearing in Article XCVII, of the Amendments to the Constitution of the
437 Commonwealth (Article 97).

438 **SECTION 10.** The energy facilities siting board shall promulgate regulations under section
439 69V and 69W of chapter 164 of the general laws within 9 months of the effective date of this act.

440 **SECTION 11.** No application may be submitted to or reviewed through the streamlined
441 permitting process established in this act until all necessary regulations are promulgated.